

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD CURTIN,

Plaintiff,

v.

WALMART INC.
d/b/a WALMART SUPERCENTER,

Defendant.

NOTICE OF REMOVAL

Index №.

PLEASE TAKE NOTICE that defendant Walmart Inc., (hereinafter “Removing Defendant”), by its attorneys, Bennett Schechter Arcuri & Will LLP, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, files this Notice of Removal of the action styled *Richard Curtin, Plaintiff, versus Walmart Inc. d/b/a Walmart Supercenter, Defendant*, Index №. 806451/2022 (the “Action”), from the Supreme Court of the State of New York, County of Erie, to the United States District Court for the Western District of New York.

In support thereof, Removing Defendant states:

1. On or about June 3, 2022, Plaintiff Richard Curtin (hereinafter, “Plaintiff”) commenced the Action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of Erie, against the Removing Defendant. A copy of the Summons and Complaint is attached hereto and incorporated herein by reference as **Exhibit A**.

2. On July 14, 2022, the Removing Defendant appeared in the Action by serving its Answer, a copy of which is attached hereto and incorporated herein by reference as **Exhibit B**.

3. On September 29, 2022, Removing Defendant received Plaintiff’s

Response to Combined Demands of the Defendants, dated September 28, 2022, which included a Supplemental Demand for Relief seeking One Million Dollars (\$1,000,000.00) in damages in this action, a copy of which is attached as **Exhibit C**.

4. According to Plaintiff's Complaint, Plaintiff Richard Curtin is an individual domiciled in the State of New York and, therefore, for the purposes of this Notice of Removal, is a citizen of the State of New York. *See* Ex. A.

5. Removing Defendant Walmart Inc. is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in the State of Arkansas and, therefore, for the purposes of diversity jurisdiction, is a citizen of the States of Delaware and Arkansas.

6. This Court has original subject matter jurisdiction over the Action pursuant to 28 U.S.C. §§1332(a) and 1441(b), because (a) there is complete diversity of citizenship among the parties; (b) the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs; and (c) none of the parties in interest who are properly joined and served as Defendants are citizens of New York State. The Action may, therefore, be removed pursuant to 28 U.S.C. § 1441(b).

7. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(3) and (c), because it is filed within thirty (30) days after receipt by the Removing Defendant of Plaintiff's Supplemental Demand for Relief where it was first ascertainable that the case was removable, and within one (1) year of commencement of the Action.

8. Pursuant to 28 U.S.C. §1441(a), removal venue exists in the United States District Court for the Western District of New York because the Supreme Court, Erie County (the Court in which the Action was originally filed) is within the jurisdiction of the Western District of

New York.

9. Pursuant to 28 U.S.C. §1446(a), all process, pleadings, and orders served to date upon the Removing Defendant are appended hereto. Pursuant to Local Rule 81(a)(3), an index of all documents filed in the state court action is attached hereto as **Exhibit D**.

10. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal is being served upon the Plaintiff and is being filed with the Clerk of the Supreme Court, Erie County. *See* Notice of Filing of Notice of Removal, with Affidavit of Service, attached hereto as **Exhibit E**.

11. Removing Defendant reserves the right to amend or supplement this Notice of Removal.

WHEREFORE, Removing Defendant requests that the case styled *Richard Curtin, Plaintiff, versus Walmart Inc. d/b/a Walmart Supercenter, Defendant*, Supreme Court of the State of New York, County of Erie, Index №. 806451/2022, be removed to this Court, and that this Court take subject matter jurisdiction over this Action.

Dated: Buffalo, New York
October 28, 2022

Yours, etc.,

/s/ Pauline C. Will

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